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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,780	10/10/2006	**Janez Kerc**	029489-00023	1166

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EXAMINER	
ARNOLD, ERNST V	

ART UNIT	PAPER NUMBER
1613	

NOTIFICATION DATE	DELIVERY MODE
12/13/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DCIPDocket@arentfox.com
IPMatters@arentfox.com
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Office Action Summary	Application No.	Applicant(s)	
	10/590,780	KERC ET AL.	
	Examiner	Art Unit	
	ERNST V. ARNOLD	1613	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 September 2010*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *14,18,19 and 21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *14,18,19 and 21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/15/10 has been entered.

Claims 1-12, 15 and 16 are withdrawn. Claims 13, 17 and 20 are cancelled. Claims 14, 18, 19 and 21 are under examination.

Change of Inventorship

In view of the papers filed 7/10/09, it has been found that this nonprovisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and accordingly, this application has been corrected in compliance with 37 CFR 1.48(a). The inventorship of this application has been changed by deletion of Janez Kerc, Zdenka Jerala-Strukelj, Vlasta Humar, Rok Grahek and Breda Husu-Kovacevic.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of Office records to reflect the inventorship as corrected.

Withdrawn rejections:

Applicant's amendments and arguments filed on 8/11/10 and 9/15/10 are acknowledged and have been fully considered. Any rejection and/or objection not specifically addressed below is herein withdrawn.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 14, 18, 19 and 21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 14 introduces new matter as the claim recites the limitation: "remains stable after one month after being prepared" There is no support in the specification for this limitation. The limitation of: "remains stable after one month after being prepared" was not described in the specification as filed, and person skilled in the art would not recognize in the applicant's disclosure a description of the invention as presently claimed. The specification discloses in [0069]: "Tablets prepared according to the composition of the previous Example have been subjected to accelerated stability testing at 60 C. for one month, confirming

stability" but does not describe the instantly claimed limitation of being stable *after one month*. There is not teaching in the specification for stability after one month. This is a new concept and represents new matter. Therefore, it is the Examiner's position that the disclosure does not reasonably convey that the inventor had possession of the subject matter of the amendment at the time of filing of the instant application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 14, 18, 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pflaum (US 6740775) in view of Yoshioka et al. (Stability of drugs and dosage forms; 2000, springer, 268 pages; pp116-117).

Applicant claims a stabilized pharmaceutical composition comprising a polymorph form of pravastatin sodium and microcrystalline cellulose.

Determination of the scope and content of the prior art

(MPEP 2141.01)

Pflaum teaches pharmaceutical compositions of the sodium salt of pravastatin in a crystalline form and methods of making them (claims 1-19). The X-ray diffraction pattern in Figure 2; shown below:

Figure 2

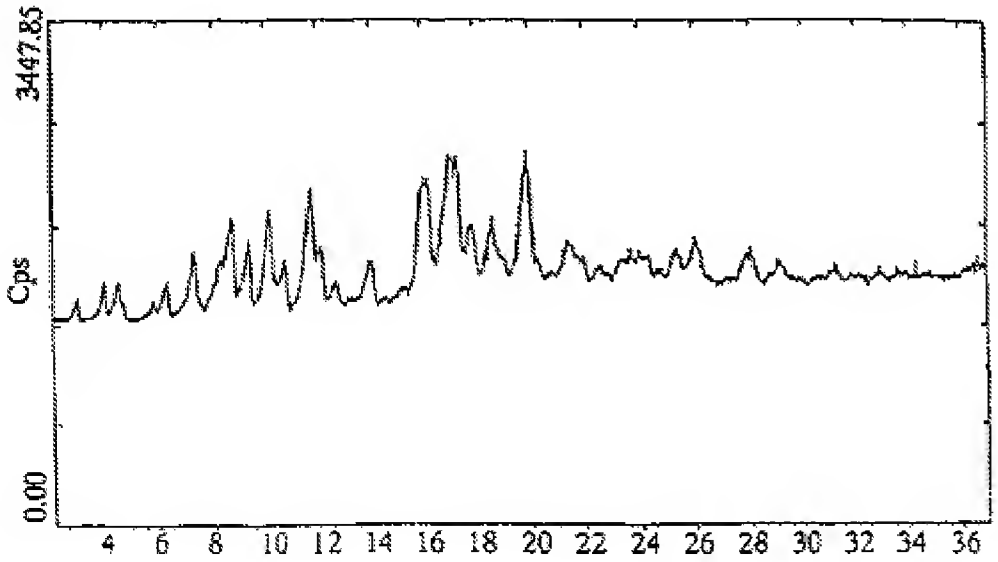

FIG. **2** is a diffractogram of crystals of the sodium salt of pravastatin prepared according to Example 2 of the present invention, which are scanned on the X-ray powder diffractometer within 2 to 48° 2Θ range with a 0.035° 2Θ step and an integration time of 1 second/step.

Applicant teaches that the instantly claimed process produces crystalline pravastatin sodium substantially similar to figure 2 above (original claim 9) and thus has the essentially same X-ray diffraction pattern with significant peaks and half value widths which equates the prior art product with that which is instantly claimed. From the instant specification [0003]: “For instance, crystalline pravastatin sodium is disclosed in U.S. Pat. No. 6,740,775 ("Form LEK")”. Tablets are taught (column 5, lines 23-25 and column 6, lines 3-9). Pflaum directs the ordinary artisan to add microcrystalline cellulose no less than three times as for different functions (column 5, lines 27-43)(Examiner added emphasis): “The pharmaceutical formulation of this invention may comprise, in addition to the sodium salt of pravastatin, one or more fillers, such as **microcrystalline cellulose**, lactose, sugars, starches, modified starch, mannitol, sorbitol and other polyols, dextrin, dextran and maltodextrin, calcium carbonate, calcium phosphate and/or hydrogen phosphate, sulphate, one or more binders, such as lactose, starches, modified starch, dextrin, dextran and maltodextrin, **microcrystalline cellulose**, sugars, polyethylene glycols, hydroxypropyl cellulose, hydroxypropyl methylcellulose, ethylcellulose, hydroxyethyl cellulose, methylcellulose, carboxymethyl cellulose, gelatin, acacia gum, tragacanth, polyvinylpyrrolidone, magnesium aluminium silicate, one or more disintegrating agents such as croscarmellose sodium, cross-linked polyvinylpyrrolidone, cross-linked carboxymethyl starch, starches and **microcrystalline cellulose**,”. Since the claim language is open, then any and all ratios of pravastatin sodium to microcrystalline cellulose are included in the disclosure of Pflaum.

Pflaum teaches methods of making the pravastatin in the presence of ethanol or methanol in column 4, lines 26-52 reproduced below:

The process for the preparation of crystals according to the present invention as described above comprises the following steps:

(a) Providing a solution containing pravastatin and sodium cations in a lower aliphatic alcohol. This is suitably carried out by dissolution of an solid and/or amorphous sodium salt of pravastatin in a lower aliphatic alcohol having preferably 1 to 4 carbon atoms. More preferably, the alcohol used for the dissolution of pravastatin sodium is ethanol or methanol. The best crystallization results have been achieved when preparing a solution of pravastatin sodium in methanol.

(b) Adding ethyl acetate into the alcoholic solution, preferably while the alcoholic solution obtained in step (a) is stirred continually. The addition of ethyl acetate into the alcoholic solution of pravastatin sodium is preferably carried out slowly, while the addition may be continuously or stepwise.

(c) Cooling the resulting alcohol/ethyl acetate mixture; and

(d) Crystallizing the sodium salt of pravastatin.

In step (d) from the cooled mixture crystals of the sodium salt of pravastatin, which preferably have a colorless or pale yellow appearance and are in the form of needles or radiating clusters, are formed.

Additionally, the crystals obtained by this process may preferably be filtered, ethyl acetate washed and dried.

Thus, the 'wet phase' comprises alcohol. Since the pravastatin sodium has to dissolve in the methanol, it is then reasonable to assert that there is more methanol present than pravastatin such that the ratio of pravastatin to alcohol is greater than one. Pflaum teaches a process of preparing the sodium salt of pravastatin using open language (claim 6).

Please note that the limitations in claim 14 concerning "occurs at least in a wet phase" and "wherein the wet phase comprises alcohol and the ratio of pravastatin sodium to alcohol is greater than one" of instant claim 18 or "wherein at least a wet

phase, the ratio of pravastating sodium to microcrystalline cellulose is at least two" of instant claim 21 reads on a product by process. Please note that in product-by-process claims, "once a product appearing to be substantially identical is found and a 35 U.S.C. 103 rejection [is] made, the burden shifts to the applicant to show an unobvious difference." MPEP 2113. This rejection under 35 U.S.C. 103 is proper because the "patentability of a product does not depend on its method of production." *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). As a practical matter, the Patent Office is not equipped to manufacture products by the myriad of processes put before it and then obtain prior art products and make physical comparisons therewith." *In re Brown*, 459 F.2d 531, 535, 173 USPQ 685, 688 (CCPA 1972). That pertains to the functional language of a solid form subjected to accelerated stability testing remains stable after one month after being prepared as well. The Patent and Trademark Office is not equipped to conduct experimentation in order to determine whether Applicants' pravastatin sodium differs and, if so, to what extent, from that of the discussed reference. Therefore, with the showing of the reference, the burden of establishing non-obviousness by objective evidence is shifted to the Applicants.

Yoshioka et al. teach that excipients such as microcrystalline cellulose absorb water and decrease degradation of drug tablets (pages 116-117 in part).

Ascertainment of the difference between the prior art and the claims

(MPEP 2141.02)

1. The difference between the instant application and Pflaum is that Pflaum do not expressly teach a weight ratio of pravastatin sodium to microcrystalline cellulose of greater than 1.

Finding of prima facie obviousness

Rational and Motivation (MPEP 2142-2143)

1. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to add a weight ratio of pravastatin sodium to microcrystalline cellulose of greater than 1 to the composition of Pflaum and produce the instant invention.

One of ordinary skill in the art would have been motivated to do this because: Pflaum teaches adding microcrystalline cellulose to the formulation but simply does not disclose the weight ratio. With regards to the weight ratio, it is the position of the Examiner that this is merely a matter of routine optimization. The amount of a specific ingredient in a composition is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. Optimization of parameters is a routine practice that would be obvious for a person of ordinary skill in the art to employ. It would have been customary for an artisan of ordinary skill to determine the optimal amount of each ingredient needed to achieve the desired results. Thus, absent some demonstration of unexpected results from the claimed parameters, the optimization of ingredient amounts would have been obvious at the time of applicant's invention. From

MPEP 2144.05: "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

The composition would be intrinsically stabilized against converting into one exhibiting peaks having half value widths of significant peaks above 2 degree 2 Theta in the absence of evidence to the contrary. As taught by Yoshioka et al, it is expected that drug tablets with microcrystalline cellulose to be more resistant to degradation because the microcrystalline cellulose absorbs water that can degrade the drug thus providing further motivation to add microcrystalline cellulose*. In other words, the expected result of adding microcrystalline cellulose to the pravastatin tablet is enhanced stability to degradation by water/humidity.*

In light of the forgoing discussion, the Examiner concludes that the subject matter defined by the instant claims would have been obvious within the meaning of 35 USC 103(a).

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

Response to argument:

Applicant asserts that nothing in Pflaum would suggest that the disclosed Lek compound would remain stable for one month. Pflaum did not have to recognize the

stability intrinsic to the composition. The principles of law state from MPEP 2112 I and II: ""[T]he discovery of a previously unappreciated property of a prior art composition, or of a scientific explanation for the prior art's functioning, does not render the old composition patentably new to the discoverer." *Atlas Powder Co. v. Ireco Inc.*, 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999). Thus the claiming of a new use, new function or unknown property which is inherently present in the prior art does not necessarily make the claim patentable. *In re Best*, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977)." "There is no requirement that a person of ordinary skill in the art would have recognized the inherent disclosure at the time of invention, but only that the subject matter is in fact inherent in the prior art reference. *Schering Corp. v. Geneva Pharm. Inc.*, 339 F.3d 1373, 1377, 67 USPQ2d 1664, 1668 (Fed. Cir. 2003)". Furthermore, the art already teaches that microcrystalline cellulose absorbs water in tablet formulations to decrease degradation. This concept is known in the art as taught by Yoshioka.

With regard to the problem of the compound being unstable when formulated with certain components, that is relevant to method claims. Here a composition with the same components is being examined. Nothing has been shown about the criticality of a weight ratio of pravastatin sodium to microcrystalline cellulose of greater than 1. No unexpected results have been shown. Applicant's arguments are not persuasive and the rejection is maintained.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 14, 18, 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keri et al. (WO 01/43723) in view of Yoshioka et al. (Stability of drugs and dosage forms; 2000, springer, 268 pages; pp116-117).

Applicant claims a stabilized pharmaceutical composition comprising a polymorph form of pravastatin sodium and microcrystalline cellulose.

Determination of the scope and content of the prior art

(MPEP 2141.01)

Keri et al. teach novel forms of pravastatin sodium, methods of making and methods of using the pravastatin sodium (Abstract and claims 1-203). Tablets are disclosed and may contain diluents such as **microcrystalline cellulose** (page 13, lines 4-7). Capsules are also taught (page 13, lines 24-27). Please note that the limitations in claim 14 concerning "occurs at least in a wet phase" and "wherein the wet phase comprises alcohol and the ratio of pravastatin sodium to alcohol is greater than one" of instant claim 18 or "wherein at least a wet phase, the ratio of pravastating sodium to microcrystalline cellulose is at least two" of instant claim 21 reads on a product by process. Please note that in product-by-process claims, "once a product appearing to be substantially identical is found and a 35 U.S.C. 103 rejection [is] made, the burden shifts to the applicant to show an unobvious difference." MPEP 2113. This rejection under 35 U.S.C. 103 is proper because the "patentability of a product does not depend on its method of production." *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). As a practical matter, the Patent Office is not equipped to manufacture products by the myriad of processes put before it and then obtain prior art products and make physical comparisons therewith." *In re Brown*, 459 F.2d 531, 535, 173 USPQ 685, 688 (CCPA 1972). That pertains to the functional language of a solid form subjected to accelerated stability testing remains stable after one month after being prepared as well. The Patent and Trademark Office is not equipped to conduct experimentation in order to determine whether Applicants' pravastatin sodium differs and, if so, to what extent, from that of the discussed reference. Therefore, with the showing of the reference, the burden of establishing non-obviousness by objective evidence is shifted to the Applicants.

Yoshioka et al. teach that excipients such as microcrystalline cellulose absorb water and decrease degradation of drug tablets (pages 116-117 in part).

Ascertainment of the difference between the prior art and the claims

(MPEP 2141.02)

1. The difference between the instant application and Keri is that Keri do not expressly teach a weight ratio of pravastatin sodium to microcrystalline cellulose of greater than 1.

Finding of prima facie obviousness

Rational and Motivation (MPEP 2142-2143)

1. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to add a weight ratio of pravastatin to microcrystalline cellulose of greater than 1 obtain a stabilized pharmaceutical composition to the composition of Keri and produce the instant invention.

One of ordinary skill in the art would have been motivated to do this because: Keri teaches adding microcrystalline cellulose to the formulation but simply does not disclose the weight ratio. With regards to the weight ratio, it is the position of the Examiner that this is merely a matter of routine optimization. The amount of a specific ingredient in a composition is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. Optimization of parameters is a routine practice that would be obvious for a person of ordinary skill in the art to employ. It would have been customary for an artisan of ordinary skill to determine the optimal amount of

each ingredient needed to achieve the desired results. Thus, absent some demonstration of unexpected results from the claimed parameters, the optimization of ingredient amounts would have been obvious at the time of applicant's invention. From MPEP 2144.05: "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

The composition would be intrinsically stabilized against converting into one exhibiting peaks having half value widths of significant peaks above 2 degree 2 Theta in the absence of evidence to the contrary. As taught by Yoshioka et al, it is expected that drug tablets with microcrystalline cellulose to be more resistant to degradation because the microcrystalline cellulose absorbs water that can degrade the drug thus providing further motivation to add microcrystalline cellulose. *In other words, the expected result of adding microcrystalline cellulose to the pravastatin tablet is enhanced stability to degradation by water/humidity.*

In light of the forgoing discussion, the Examiner concludes that the subject matter defined by the instant claims would have been obvious within the meaning of 35 USC 103(a).

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

Response to arguments:

Applicant asserts that the cited art does not motivate one to make the optimizations because neither reference acknowledges a polymorph of pravastatin may be rendered unstable when formulated by wet granulation. First of all a composition claim is under examination and not method claims. Second of all, the art already teaches that microcrystalline cellulose absorbs water in tablet formulations to decrease degradation due to water. This concept is known in the art as taught by Yoshioka.

Nothing has been shown about the criticality of a weight ratio of pravastatin sodium to microcrystalline cellulose of greater than 1. No unexpected results have been shown. Applicant's arguments are not persuasive.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

1. Claims 14, 18, 19 and 21 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 7, 14, 17, 18, 19, 25, 32, 33, and 39 of U.S. Patent No. 6680341 in view of Pflaum (US 6740775) and Yoshioka et al. (Stability of drugs and dosage forms; 2000, springer, 268 pages; pp116-117).

The references of Pflaum and Yoshioka et al. are discussed in detail above and those discussions are hereby incorporated by reference. The instant subject matter embraces or is embraced by the copending subject matter. US 6680341 teaches stable/stabilized pharmaceutical formulations of sodium pravastatin and fillers. The disclosure encompasses all polymorphs of sodium pravastatin.

US 6680341 does not expressly teach the filler to be microcrystalline cellulose of a particular particle size and ratio with the active.

However, the art teaches using microcrystalline cellulose in sodium pravastatin formulations and the art teaches microcrystalline cellulose within the instant particle size. It would be obvious to use microcrystalline cellulose in the stable/stablized pravastatin formulations taught in 6680341 because the art suggests doing so. With regards to the weight ratio of ingredients; the amount of a specific ingredient in a composition is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. Optimization of parameters is a routine practice that would be obvious for a person of ordinary skill in the art to employ. It would have been

customary for an artisan of ordinary skill to determine the optimal amount of each ingredient needed to achieve the desired results. Thus, absent some demonstration of unexpected results from the claimed parameters, the optimization of ingredient amounts would have been obvious at the time of applicant's invention. Please note that in product-by-process claims, once a product appearing to be substantially identical is found and a 35 U.S.C. 103 rejection [is] made, the burden shifts to the applicant to show an obvious difference. MPEP 2113. This rejection under 35 U.S.C. 103 is proper because the "patentability of a product does not depend on its method of production." *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985).

Thus, one of ordinary skill in the art would have recognized the obvious variation of the instant invention over the patent in view of the cited references.

2. Claims 14, 18, 19 and 21 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 12, 13, and 17 of U.S. Patent No. 6531507 in view of Pflaum (US 6740775) and Yoshioka et al. (Stability of drugs and dosage forms; 2000, springer, 268 pages; pp116-117).

The references of Pflaum and Yoshioka et al. are discussed above and those discussions are hereby incorporated by reference. The instant subject matter embraces or is embraced by the copending subject matter. US 6531507 teaches pharmaceutical formulations of sodium pravastatin and fillers. The disclosure encompasses all polymorphs of sodium pravastatin and is open to the addition of ingredients.

US 6531507 does not expressly teach the filler to be microcrystalline cellulose of a particular particle size and ratio with the active.

However, the art teaches using microcrystalline cellulose in sodium pravastatin formulations and the art teaches microcrystalline cellulose within the instant particle size. It would be obvious to use microcrystalline cellulose in the pravastatin formulations taught in US 6531507 because the art suggests doing so. With regards to the weight ratio of ingredients; the amount of a specific ingredient in a composition is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. Optimization of parameters is a routine practice that would be obvious for a person of ordinary skill in the art to employ. It would have been customary for an artisan of ordinary skill to determine the optimal amount of each ingredient needed to achieve the desired results. Thus, absent some demonstration of unexpected results from the claimed parameters, the optimization of ingredient amounts would have been obvious at the time of applicant's invention. Please note that in product-by-process claims, once a product appearing to be substantially identical is found and a 35 U.S.C. 103 rejection [is] made, the burden shifts to the applicant to show an obvious difference. MPEP 2113. This rejection under 35 U.S.C. 103 is proper because the "patentability of a product does not depend on its method of production." *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985).

Thus, one of ordinary skill in the art would have recognized the obvious variation of the instant invention over the patent in view of the cited references.

Response to arguments:

Applicant's arguments are moot in view of the new ground of rejection.

Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERNST V. ARNOLD whose telephone number is (571)272-8509. The examiner can normally be reached on M-F 7:15-4:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Kwon can be reached on 571-272-0581. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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